

HOUSE BILL REPORT

HB 1371

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to revising the mandatory overtime prohibition applicable to nurses, but only with respect to increasing the types of health care facilities that are subject to the prohibition from requiring nurses to perform overtime work and limiting the exceptions from the prohibition related to prescheduled on-call time and completion of patient care procedures.

Brief Description: Modifying the nurse mandatory overtime prohibition.

Sponsors: Representatives Morrell, Conway, Moeller, Hasegawa, Cody, Green, Campbell, McCoy, Appleton, Simpson, Hudgins, Sells, Williams, Kenney and Chase.

Brief History:

Committee Activity:

Commerce & Labor: 1/16/06, 1/23/06 [DPS].

Brief Summary of Substitute Bill

- Adds various public facilities, including state hospitals, veterans' homes, residential habilitation centers, and correctional facilities, to the health care facilities prohibited from requiring overtime from their nursing staff.
- Allows the use of mandatory overtime for patient care in progress as long as the facility made reasonable efforts to avoid overtime work.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Hudgins, Kenney and McCoy.

Minority Report: Do not pass. Signed by 3 members: Representatives Condotta, Ranking Minority Member; Chandler, Assistant Ranking Minority Member and Holmquist.

Staff: Chris Cordes (786-7103).

Background:

Both federal and Washington minimum wage laws establish requirements related to overtime work. These laws require covered employees to receive overtime pay for hours worked over

40 hours per week. Another state law requires overtime compensation for certain full-time employees, including nursing staff, of state institutions under the control of the Department of Social and Health Services (DSHS) or the Department of Corrections (DOC) after eight hours of work in a work day or 40 hours of work in a work week. With some exceptions, these wage laws do not prohibit an employer from requiring employees to work overtime.

One exception enacted in 2002 prohibits covered health care facilities from requiring overtime, except in limited circumstances, for registered nurses and licensed practical nurses who are involved in direct patient care and paid an hourly wage. For this prohibition on mandatory overtime, overtime means work in excess of an agreed upon, regularly scheduled shift of not more than 12 hours in a 24-hour period or 80 hours in a 14-day period. A health care facility means a facility that is licensed under specified laws as a hospital, a hospice, a rural health care facility, or a psychiatric hospital. A nursing home or a home health agency is considered part of a health care facility if the nursing home or home health agency is operating under the license of the health care facility.

The state psychiatric hospitals and other institutions operated by the DSHS or the DOC are not licensed under the statutes specified in the overtime prohibition law. Home health agencies are not authorized to operate under a license of a health care facility.

The prohibition on mandatory overtime does not apply to overtime work that occurs in certain specific circumstances. One exception includes overtime work that occurs because the work is required to complete a patient care procedure already in progress.

Summary of Substitute Bill:

Coverage under the Prohibition on Mandatory Overtime Law

The following entities are added to the list of health care facilities covered under the prohibition on mandatory overtime law for certain registered and licensed practical nurses:

- state hospitals that are operated and maintained by the state for the care of the mentally ill; (These facilities are Western State Hospital, Eastern State Hospital, and the Child Study and Treatment Center.)
- state veterans' homes; (These homes are the Washington Soldiers' Home, the Washington Veterans' Home, and the Eastern Washington Veterans' Home.)
- residential habilitation centers established to provide services to persons with developmental disabilities; (These centers are Lakeland Village, Rainier School, Yakima Valley School, Fircrest School, Frances Haddon Morgan Children's Center, Interlake School, and facilities at Harrison Memorial Hospital.)
- state or local correctional institutions with respect to facilities owned and operated by the state or by local governments that provide health care services to adult inmates; and
- facilities that provide health care in an institution for juveniles committed to the custody of the DSHS or in a county detention facility where juveniles are confined.

The requirement is deleted for home health agencies to be covered if operating under the license of a health care facility.

For certain employees of the DSHS or the DOC who are entitled to overtime compensation, the applicable overtime requirements are subject to the prohibition on mandatory overtime law if the employees are covered employees of a health care facility under that law.

Exception from the Prohibition on Mandatory Overtime Law

One of the exceptions to the prohibition on using mandatory overtime is modified. Completing a patient care procedure already in progress is an exception as long as the health care facility made reasonable efforts to schedule such procedures without requiring overtime.

Substitute Bill Compared to Original Bill:

The substitute: (1) deletes changes in requirements for overtime related to prescheduled on-call time; and (2) modifies the changes in requirements for overtime related to a patient care procedure in progress by requiring the employer to make "reasonable efforts," instead of a "good faith effort" to avoid overtime work.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: (In support) Nurses in state facilities deserve the same protections against forced overtime that now apply in the private sector. The hospitals have begun using prescheduled on-call to fill staffing shortages. On-call used to be prescheduled only in units that were not staffed 24/7. On-call time amounts to mandatory overtime because these employees have to work all scheduled days in addition to any on-call time. They must sacrifice a day off and have no control over their schedule. If placed on a night shift, they must rest during the day in case they are called in to work, must plan for extra child care, and must stay close to the facility. They are not compensated for the on-call time, although it results in significant disruptions of their lifestyle. This does not help attract quality nurses to the profession. While some on-call is unavoidable, it is expanding into other units where it was not traditionally a problem. This practice can put patients at risk.

(With concerns) There are concerns about the section changing the exceptions to mandatory overtime. No other state takes this approach. All hospitals use on-call schedules. If a facility changed staffing decisions to meet the best interest of the patient, the facility would be subject to litigation under the new language. The original language was delicately crafted and should not be changed without a study of the consequences. The bill does not fit, and should not include, home health agencies.

Testimony Against: None.

Persons Testifying: (In support) Representative Morrell, prime sponsor; Anne Tan Piazza and Becky Dawson, Washington State Nurses Association; and Sharon Ness, United Food and Commercial Workers, Local 141.

(With concerns) Lisa Thatcher, Washington State Hospital Association; Bill Greenheck, Multicare Health Systems; and Gail McGaffick, Home Care Association of Washington.

Persons Signed In To Testify But Not Testifying: None.